

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL J. ROSS,

Petitioner,

-against-

MEMORANDUM & ORDER

08-CV-4247 (NGG)

DAVE NAPOLI, Superintendent of Southport
Correctional Facility,

Respondent.

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NICHOLAS G. GARAUFIS, United States District Judge.

Petitioner Michael J. Ross ("Petitioner" or "Ross") is currently incarcerated at Southport Correctional Facility in Pine City, New York pursuant to a judgment of conviction entered in New York State Supreme Court, Queens County. On September 25, 2008, he filed this pro se petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Western District of New York. That court transferred the petition to this court, where it was received on October 20, 2008. (Docket # 4.) As Petitioner has filed a prior petition pursuant to 28 U.S.C. § 2254 challenging the same conviction, the court cannot consider the instant petition and respectfully transfers it to the United States Court of Appeals for the Second Circuit for its consideration pursuant to 28 U.S.C. § 1631.

This successive petition challenges a judgment of conviction entered in Supreme Court Queens County on September 7, 1995 for manslaughter in the first degree and three counts of criminal possession of a weapon in the second degree.¹ Petitioner has previously challenged this


¹ In his petition, Petitioner gives an erroneous sentencing date of September 7, 2008. (Docket # 1, at 2.) However, he lists the date of his direct appeal as November 10, 1997. (Id. at 3.) Petitioner further states that he is serving 8 1/3 - 25 years for "manslaughter in the 1st degree, possession of weapon in 2nd degree, 3 counts." (Id. at 2.) The Appellate Division's decision on Ross' direct appeal makes clear that this judgment was rendered on September 7, 1995. People v. Ross, 244 A.D.2d 437, 437-38 (N.Y.

conviction in a prior petition to the United States District Court for the Eastern District of New York. See Ross v. Phillips, No. 03 CV 3462 (NGG) (E.D.N.Y. Apr. 22, 2004) (petition denied), aff'd Ross v. Spitzer, No. 04-3411, 2006 WL 93082 (2d Cir. Jan. 11, 2006). The Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications." Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003). Therefore, petitioner must move in the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

Accordingly, the court directs the Clerk of Court to transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Torres, 316 F.3d at 151-52 (citing Liriano v. United States, 95 F.3d 119 (2d Cir. 1996) (per curiam)). This order closes this case. If the Second Circuit authorizes petitioner to proceed in this matter, petitioner shall move to reopen under this docket number.

SO ORDERED.

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS 
United States District Judge

Dated: Brooklyn, New York
November 3, 2008

App. Div. 1997).